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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joseph W. Cotchett

Serial No. 78208591

Paul W. Reidl, Esq. for Joseph W. Cotchett.

S.E. Hickey, Trademark Examining Attorney, Law Office 112
(Janice O'Lear, Managing Attorney).

Before Hohein, Drost and Walsh, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On January 29, 2003, Joseph W. Cotchett (applicant)
filed an intent-to-use application to register HALF MOON
BAY on the Principal Register for "wines."

The examining attorney refused registration on the
ground that the mark is primarily geographically
descriptive of the goods under Section 2(e)(2) of the
Trademark Act, 15 U.S.C. § 1052(e)(2). Applicant

responded; the examining attorney issued a final refusal; and applicant appealed.

The sole issue on appeal is whether HALF MOON BAY is primarily geographically descriptive of wines.

To determine whether HALF MOON BAY is primarily geographically descriptive of wines we must determine: (1) whether the primary significance of the mark is as the name of a place which is generally known; and (2) whether the wine-purchasing public would associate the goods of applicant with the place named, that is, whether the public would believe that the goods come from the place named. In re Societe Generale des Eaux Minerales de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); In re JT Tobacconists, 59 USPQ2d 1080, 1081 (TTAB 2001); In re California Pizza Kitchen Inc., 10 USPQ2d 1704, 1705 (TTAB 1988). The two questions are bound together, that is, there can be no goods-place association if the place named is so obscure or remote that purchasers for the product at issue would not recognize it as a place. Vittel, 3 USPQ2d at 1452.

In a concurring opinion in In re Nantucket, Inc., 677 F.2d 95, 213 USPQ 889, 895 (CCPA 1982), Judge Nies discussed the common law origins of the Trademark Act treatment of geographic terms:

Basic to consideration of the registrability and protectability of geographic terms as a trademark is the routine commercial practice of merchants, whether they are growers, manufacturers, distributors, or local retailers in placing the name of their location on their goods or using the name in their trade name. Because the public would be aware of common trade practice, the common law originally deemed all use of geographic names wholly informational and unprotectible. It was believed such names could not function, and in any event, should not be recognized as the identification of a single source. Thus we must start with the concept that a geographic name of a place of business is a descriptive term when used on the goods of that business. There is a public goods/place association, in effect, presumed.

However, as with other terms which are descriptive when first used, it came to be recognized that through substantially exclusive and extensive use, a merchant might develop a protectible good will in such a geographically descriptive name upon proof that the name ceased being informational to the public and came to indicate a source of goods.

Applicant observes that, in fact, "The wine industry commonly uses geographic place names as trademarks."

Applicant's Brief at 9. And, in particular, applicant indicates further that, ". . . applicant's winery is located in Half Moon Bay, California." Id. at 3.

With the final refusal, the examining attorney provided evidence relevant to both the primary geographic significance of HALF MOON BAY and the association of wines with that place. The relevant evidence comes from the electronic version of the Columbia Gazetteer of North

America (2000) and Merriam-Webster's Geographical Dictionary (3rd ed. 1988).

The Gazetteer includes an entry for Half Moon Bay as follows:

Half Moon Bay, city (1990 pop. 8,886) San Mateo co., W Calif, suburb 23 mi/37 km S of downtown San Francisco, on picturesque Half Moon Bay, of Pacific Ocean, at mouth of Pilarcitos Creek; 37°28'N 122°27'W. sheltered on N by Pillar Point. Artichokes, brussel sprouts; grain; Christmas trees, ornamentals, flowers, nursery prods.; fishing; mfg. (musical instruments, light mfg.). Annual Pumpkin Festival. Half Moon Bay Airport to NW; Santa Cruz Mts. and San Francisco Fish and Game Reserve to NE; part of Half Moon Bay State Beach is to N.

The geographical dictionary includes only one entry for "Half Moon Bay" as follows: "**Half Moon Bay**, City, San Mateo co., W California, on Half Moon Bay (inlet); pop. (1990c) 8886."

The examining attorney's evidence indicates that there is a city named Half Moon Bay located on a bay of the same name about 20 miles south of San Francisco. The city is of significant size with a 1990 population of nearly 9,000. The evidence indicates further that there is agricultural, fishing and manufacturing activity in the city and area known as Half Moon Bay. There is also a local airport called Half Moon Bay Airport.

Applicant adds some additional information by representing that, "The purchasing public, inasmuch as it is familiar with Half Moon Bay, California, recognizes this place as a seaside resort and weekend getaway."

Applicant's Brief at 5. Based on applicant's representation, we conclude that Half Moon Bay, California is also a destination for tourists and vacationers.

When viewed as a whole, the evidence leads to the conclusion that HALF MOON BAY refers to a known geographical location, namely, Half Moon Bay, California, which is neither obscure nor remote. This is also the place where applicant is located.

We also conclude that there is an association between Half Moon Bay, California and wine. In concluding so we first note that, as a general proposition, a goods-place association can be presumed when, as here, the goods of applicant, in fact, come from the place named. In re MCO Properties, Inc., 38 USPQ2d 1154, 1155 (TTAB 1995); In re Cambridge Digital Systems, 1 USPQ2d 1659, 1661 (TTAB 1986); In re Handler Fenton Westerns, Inc., 214 USPQ 848, 849 (TTAB 1982). In this case, we need not rely on that presumption alone because Half Moon Bay, California is a place of significant size where both agricultural and manufacturing activity occurs. Thus, Half Moon Bay,

California is not a place "devoid of commercial activity." In re Cambridge Digital Systems, 1 USPQ2d at 1662. In fact, Half Moon Bay, California is the locus of activities, agricultural and manufacturing, which are entirely compatible with the production of wine. In re Cambridge Digital Systems, 1 USPQ2d at 1662 (Goods-place association found between Cambridge, Massachusetts and computers based on evidence that Cambridge is a "manufacturing and commercial center for electrical machinery and scientific instruments."). And, applicant is, in fact, producing wine in Half Moon Bay, California.

All in all, the evidence points to the conclusion that HALF MOON BAY refers to a known geographical location which is neither obscure nor remote, and an association of that location with wine.

Applicant argues that HALF MOON BAY has a suggestive, nongeographical meaning, and therefore, is not primarily geographically descriptive. Applicant's Brief at 3. However, there is simply no basis to conclude, as applicant urges, that the mark will conjure up in the minds of wine drinkers "the image of enjoying Applicant's product in the moonlight by the water" rather than a place. Id. If we were to adopt applicant's view, we would be compelled to find virtually any place name derived from suggestive

terminology, such as Clearwater or Palm Springs, not primarily geographically descriptive. This argument is merely another way of asserting that a place name is obscure, and therefore, would not be perceived as a place name. Furthermore, there is no evidence here to establish an alternative, overriding meaning which the public would associate with HALF MOON BAY.

This case is also not at all like other cases where the Board has found that a suggestive meaning, growing out a strong association of the place named with an industry or institution, overrides the geographical significance when the mark is applied to certain goods or services. In re International Taste Inc., 53 USPQ2d 1604, 1605 (TTAB 2000); In re Municipal Capital Markets Corp., 51 USPQ2d 1369, 1371 (TTAB 1999); In re Cotter & Co., 228 USPQ 202, 205 (TTAB 1985). Simply put, HALF MOON BAY is not Hollywood, Cooperstown or West Point. We have concluded that, on this record, HALF MOON BAY is neither remote nor obscure and that there is no established, alternative primary meaning for HALF MOON BAY in the public mind.

We also reject the suggestion that the association of the place primarily with tourism somehow negates the primary geographical meaning as applied to wines. In re Nantucket Allserve Inc., 28 USPQ2d 1144, 1145 (TTAB 1993).

Applicant also argues that there are other places known as HALF MOON BAY, and therefore, the mark is not primarily geographically descriptive of Half Moon Bay, California. In both the main brief and reply brief applicant notes the existence of "other" Half Moon Bays in Australia, New Zealand, St. Kitts and Antigua.¹ The only support applicant provides to demonstrate the existence of these places are web addresses. In providing the web addresses applicant apparently presumed that the content of the associated sites would become of record. The examining attorney objected to the form of this evidence. In his reply brief applicant continues to urge acceptance of this "evidence" and argues further that the Board can independently verify applicant's assertions by consulting an atlas. However, applicant neither identifies nor provides pages from any atlas for this purpose.

The identification of web addresses alone is insufficient to make content provided on those web sites of record. The content of web sites changes constantly, in many instances minute by minute. Web addresses also change

¹ In his first office action response applicant referred to additional potential Half Moon Bays, including a bay on a lake in Grand Teton National Park, a swamp in South Carolina and a bay in Jamaica, also without providing any supporting documentation. It is unclear whether applicant intended to maintain these references as part of its argument, but we find these no more persuasive than those applicant cites in its brief.

constantly. Indeed, entire web sites can disappear without notice, and likewise web addresses can be rendered inactive without notice. Consequently, the provision of a mere web address in an attempt to make the content of the associated site of record does not afford any of the certainty or permanence required to establish a record. In re Planalytics Inc., 70 USPQ2d 1453, 1457-58 (TTAB 2004).

Therefore, we have not considered any content from the web sites which may be associated with the web addresses to which applicant refers in its papers. The record on appeal is limited to materials properly made of record either by applicant or the examining attorney prior to appeal. 37 C.F.R. § 2.142(d). If an applicant wishes to rely on content from a web site, the applicant must print out the relevant content and submit it for the record prior to appeal with appropriate information as to the source.

With regard to applicant's suggestion that the Board take judicial notice of an unidentified atlas, we note that applicant could have made material from an atlas of record but did not do so. The Board may, in its discretion, take judicial notice of certain sources. In this case, we decline to do so.

Turning to the merits of applicant's arguments that there are other places known as HALF MOON BAY, the only

basis we have for finding that such places exist is applicant's assertion. Applicant's assertion is insufficient for this purpose. Even if applicant had supported this assertion with evidence, the existence of these other apparently obscure places outside the United States known as Half Moon Bay would be insufficient to refute the conclusion that the primary geographic significance of HALF MOON BAY is the place where applicant is located. The mere existence of other places of the same name is generally insufficient to negate a finding that a place name is primarily geographically descriptive. In re Loew's Theatres Inc., 769 F.2d 764, 226 USPQ 865, 868 (Fed. Cir. 1985); In re Cambridge Digital Systems, 1 USPQ2d at 1662.

Lastly, Applicant argues that the issuance of registrations for two marks, LIVINGSTON CELLARS and WOODBRIDGE, for wines supports registration in this case. Applicant argues that each of these marks identifies the place in California where the respective wines are produced. We reject this argument as well.

First we turn to the form of this evidence. In his brief the examining attorney objected to applicant's submission of the full electronic records regarding these registrations with applicant's brief. Applicant had

referred to the registrations in his response to the first office action. The examining attorney objected to the references in the final action indicating that the references were insufficient to make the registrations of record. Accordingly, we will not consider either the information applicant provided in the office action response or the full electronic copies of the registration information applicant provided with its brief. The information applicant provided with its response was insufficient to make the registrations of record and applicant's submission of the full records with its brief was untimely. 37 C.F.R. § 2.142(d). TBMP § 1208.02 (2d ed. rev. 2004).

Also, applicant provided no evidence to support its contention that Livingston and Woodbridge are place names. The examining attorney provided the relevant page from the geographical dictionary indicating that there is no entry for Woodbridge, California. More importantly, even if applicant had provided appropriate documents at the appropriate time to support this argument, we must determine whether a particular place name is "primarily geographically descriptive" according to the unique facts of each case. Neither the Board nor the examining attorney is bound by the prior actions of the Office in cases which

involve different facts. In re Nett Designs, Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). One could just as readily identify registrations for geographical place names for wine issued on the basis of acquired distinctiveness, consistent with the common law practice now codified in the Trademark Act which Judge Nies described. Nantucket, 213 USPQ at 895.

In conclusion, we have considered all of the evidence which is properly of record in this case and determined that HALF MOON BAY is primarily geographically descriptive for wines. Half Moon Bay, California is a place which is neither obscure nor remote, but rather a place which would be generally known to the purchasers of wine. And HALF MOON BAY is also a place which is associated with wines.

Decision: The refusal to register the mark because it is primarily geographically descriptive of the goods is affirmed.